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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,491	09/11/2001	Mark DeRaud	512.02	8054

7590 02/08/2006

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EXAMINER	
TRAN LIEN, THUY	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	09/954,491	DERAUD ET AL.	
	Examiner	Art Unit	
	Lien T. Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 November 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the article " Pizza Inversion" for the same reason set forth in the previous office action.

Claims 14-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Appleton article in view of the cookbook " Cooking A to Z" for the same reason set forth in the previous office action.

In the response filed 11/21/05, applicant argues hindsight is used in the rejection because forming a pocket with a traditional slice of pizza or a personal sized pizza has not been known and would not have been obvious. This argument is not persuasive. It is unclear how applicant view this concept is unknown. There are many type of pizza pocket products commercially available. Besides this, the very teaching of the Appleton article teaches this concept. The article teaches to invert one slice of pizza over another slice to encapsulate the cheese, sauce and topping. The article also teaches folding the pizza slice lengthwise or to fold the pointed end toward the crust end; this folding will form a pocket. Thus, the formation of a pocket is not unknown as applicant argues. Applicant argues the traditional slice of pizza is not easily formed into a pocket. This argument supports the position that whether one skilled in the art will form one fold or two also depends on the size of the slice of pizza or the person pan pizza. If the slice is large and one fold still gives a big product. One would be motivated to fold it again to make the product more compact. Thus, in addition to enclosing the filling, one would also fold more than one to make the product smaller for easy handling. The main question is whether these folds are known to be done on a pizza slice and this question is explicitly answered in the article. Thus, the rejection is not based on hindsight. A 103

rejection must also take into consideration skill of one in the art. Applicant argues the article teaches away from using the end fold because you don't get full slice coverage this way. The article cannot teach away from end fold because it discloses that " another variation that works with single slice is to fold the pointed end of the slice toward the crust, you don't get full slice coverage this way but some have expressed a preference for this particular implementation". The key point is individual preference. While one might prefer one lengthwise fold; other might prefer combination of folds to make the product compact for easy handling.

With respect to the cookbook reference, applicant argues no matter how versatile pizza is, the consumer would not omit toppings from only a tip portion of a pizza slice. Where the topping is removed is a matter of individual preference and convenient. If a filling is not wanted at the tip, it would have been obvious to remove it from the tip. Applicant also comments on the declaration. The declaration has already been considered and was not found persuasive. Applicant states that in view of the declarant vast experience and knowledge, the opinion set forth in the declaration is a fact itself. The examiner respectfully disagrees with this assertion. Opinion does not equate to factual evidence.

Applicant's submits two articles to provide evidence of the unfulfilled need to provide pizza on-the-go. It is unclear how the two articles are relevant to the issue at hand. The articles do not discuss pizza product.

In the supplemental response filed 11/23/05, applicant states 16 other people are acknowledge in the article and none teaches the combining of the two folds. The point

of this statement is not understood. What 17 people do or not do does not predict what one skilled in the art will do or not do. Seventeen people do not represent the entire population. Furthermore, it is not known what these people do or not do.

Applicant's arguments filed 11/21/05 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 3, 2006

Lien Tran

LIEN TRAN
PRIMARY EXAMINER
Group 1700